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Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

**ROBERT G. CRONSON, as Auditor General of the State of Illinois, and Individually,**

*Petitioner,*

v.

**HONORABLE WILLIAM G. CLARK, Chief Justice, Illinois Supreme Court, et al.,**

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## QUESTION PRESENTED FOR REVIEW

Was the Court of Appeals for the Seventh Circuit correct in affirming the District Court for the Central District of Illinois' decision to refuse to enjoin proceedings before the Illinois Supreme Court where the substantive issue in those proceedings turned entirely upon a construction of state constitutional law and implicated important state interests?

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## STATEMENT OF THE CASE

This case arose from petitioner's request that the United States District Court for the Central District of Illinois enjoin proceedings filed against him in the Illinois Supreme Court. The Illinois Supreme Court proceedings related to a dispute involving a determination of the extent of petitioner's obligations as Auditor General of Illinois to audit certain state expenditures. The District Court denied petitioner's motion for a preliminary injunction and subsequently dismissed the suit on grounds of comity and federalism. The United States Court of Appeals for the Seventh

Circuit affirmed the denial of the preliminary injunction and the dismissal of the suit because it found that petitioner had suffered no injury on which his suit might be based and therefore lacked standing. The Court of Appeals also unanimously denied petitioner's motion for rehearing *en banc*.

Most of the petitioner's Statement of the Case is simply irrelevant to this petition, as evidenced in part by the five questions presented for review that are identical to the questions presented for review in a separate petition for writ of certiorari, *Cronson, Auditor General of the State of Illinois v. William M. Madden, Acting Director of the Administrative Office of the Illinois Courts*, No. 86-1773, filed May 1, 1987. The major inaccuracy in petitioner's Statement of the Case is the assertion that "at no point in the federal proceedings did petitioner ever seek resolution of any state issue." (Petition at 7) This is untrue. In seeking to enjoin the state court from ruling on an issue of state law, petitioner sought to deny the state the right to decide a question of important state interest.

## REASONS FOR DENYING THE WRIT

### I.

### PETITIONER HAS NOT SHOWN WHY CERTIORARI SHOULD BE GRANTED.

United States Supreme Court Rule 17 provides that "review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." The Petition for Certiorari ignores this Rule. Petitioner makes no claim that the courts below decided "an important question of

federal law which has not been, but should be, settled by this Court" or made a decision in conflict with applicable decisions of this Court or any other federal court of appeals or state court of last resort. United States Supreme Court Rule 17.1(a) and (c).

Rather than trying to show "special and important reasons" such as those listed in Supreme Court Rule 17, petitioner simply reargues the substantive merits of his case below. Petitioner merely claims he has a federal interest at stake. This claim, without more, is insufficient to warrant review by this Court. For this reason alone, this petition for writ of certiorari should be denied.

## II.

## THE DISTRICT COURT CORRECTLY APPLIED WELL SETTLED PRINCIPLES OF FEDERALISM AND COMITY.

Far from "depart[ing] from the accepted and usual course of judicial proceedings," Supreme Court Rule 17.1(a), the District Court applied "well established constitutional principles of states rights, comity and federalism [which] require federal courts to abstain from matters involving important state interests, until state courts have had the opportunity to rule." *Cronson v. Clark*, No. 86-3180, slip op. at 2 (C.D. Ill. 1986). (App. to petition at 10) The District Court recognized that important state interests were involved in delineating the duties of the Illinois Auditor General pursuant to the Illinois Constitution and Illinois statutes.

The principles followed by the District court were set out in *Younger v. Harris*, 401 U.S. 37 (1971), which applied the rule that a federal court will not interfere with the orderly functioning of the state's judicial process and that

state courts are fully competent to adjudicate federal constitutional rights. "[I]t has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Younger*, 401 U.S. at 45.

The District Court accordingly recognized that "proper respect for state brethren permits the court to assume that they will vigorously safeguard federal constitutional rights." *Cronson v. Clark*, 645 F. Supp. 793, 795 (C.D. Ill. 1986). (App. to petition at 14) *See, Middlesex Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) (holding that regulation of the state bar and state judicial system is a substantial state interest requiring federal court abstention). Moreover, the Supremacy Clause requires that "the Judges in every State shall be bound" by the United States Constitution. U.S. Const. Art. VI, cl. 2. This fundamental principle of our federal system of government underlies the reluctance of federal courts to enjoin ongoing state court actions. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 605 (1975).

The District Court correctly followed these precedents by refusing to enjoin the state court proceedings. Petitioner's writ of certiorari should be denied.

## III.

## THE COURT OF APPEALS CORRECTLY HELD THAT THE DUE PROCESS CLAUSE CANNOT REMEDY HYPOTHETICAL INJURIES.

Petitioner failed to allege a concrete injury legally cognizable under 42 U.S.C. § 1983 (1987) ("Section 1983"). Thus, he had no standing to bring this action in a Federal Court. The Seventh Circuit recognized that "there is no

way [Cronson] can show a deprivation of his life, liberty or property, which is a precondition to complaining of a denial of due process of law under the Fifth or Fourteenth Amendments." *Cronson*, 810 F.2d 662, 665 (7th Cir. 1987). (App. to petition at 4) Petitioner lacks any "personal injury fairly traceable to the defendant's allegedly unlawful conduct likely to be redressed by the requested relief," *Allen v. Wright*, 468 U.S. 737, 751 (1984), the required test under well-established standing principles.

This Court has held that to have standing to maintain an action under Section 1983, a plaintiff must show that state officials deprived him of a property interest or a right secured by the Constitution and laws of the United States. *Baker v. McCollan*, 443 U.S. 137, 140 (1979); *Board of Regents v. Roth*, 408 U.S. 564, 576-78 (1972). Moreover, "this Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court." *Allen v. Wright*, 468 at 754. Thus, to invoke the due process clause, petitioner must allege injury to a liberty or property interest. No such interest is implicated in the question of how petitioner fulfills certain official duties which was the subject of the action in the Illinois Supreme Court that he sought to enjoin. Therefore petitioner lacks standing under Section 1983. In the words of the Seventh Circuit:

> [T]he terms "liberty" and "property" do not encompass the interest of a public official in being allowed to act to the full extent of what he conceives to be his powers under state law. The federal courts do not sit to resolve intramural disputes among state officials over the bounds of their authority under state law. Whether Mr. Cronson is told to conduct

> a full audit, a partial audit, or no audit, there is no way he can show a deprivation of his life, liberty, or property, which is a precondition to complaining of a denial of due process of law under the Fifth or Fourteenth Amendments.

*Cronson v. Clark*, 810 F.2d 665. (App. to petition at 4)

The Seventh Circuit acted in conformance with the applicable decisions of this Court and the accepted and usual course of judicial proceedings in concluding that "the due process clause does not confer on Mr. Cronson a right to conduct a more extensive audit," *Cronson*, 810 F.2d at 665, App. to petition at 4, and that his suit therefore should be dismissed for want of federal jurisdiction.

Petitioner's attempt in his petition for writ of certiorari to characterize the underlying action as being a threat to his job is far too hypothetical to cure his standing defect. (Petition at 27) A closer examination of the complaint reveals no allegation that his job is actually in danger. The complaint merely alleges that Cronson "*could* be wrongfully subjected to the loss of his public office." (Complaint ¶ 24) (emphasis added) Petitioner correctly points out that "under Section 3 of Article VIII of the Illinois Constitution, he may be removed from office in mid-term 'for cause' by a vote of the General Assembly." (Petition at 27) However, petitioner has made no allegations that the Illinois General Assembly has begun any such proceedings. Such an injury is both hypothetical and too far removed from respondent's action to confer standing. *See Allen v. Wright*, 468 U.S. 737 (1984).

## CONCLUSION

The issue before this Court on this petition for writ of certiorari is not, as petitioner might have this Court believe, whether the Illinois Supreme Court denied Cronson's due process rights when it denied his motion to dismiss for want of jurisdiction, but rather whether based on principles of federalism, comity and standing, the *federal courts* properly refused to enjoin the Illinois Supreme Court from hearing the case. It is well established that the proper path for review of state court decisions is through a state's appellate courts to the United States Supreme Court, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 605 (1975), not through collateral lawsuits in the federal courts seeking to enjoin the state court proceedings.

WHEREFORE, respondent respectfully requests that this Court deny the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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